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Sumio Iwase

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EXAMINER

CHANDLER, SARA M

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/869,993	<b>Applicant(s)</b> IWASE, SUMIO	
	<b>Examiner</b> SARA CHANDLER	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/04/10.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 7-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/10/01</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's election without traverse of Invention I (claims 1-6) in the reply filed on 10/04/10 is acknowledged.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art.

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In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

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inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

### ***Information Disclosure Statement***

The information disclosure statement filed 7/10/01 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1 - 6** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Re Claim 1: Improper apparatus claim/Software Per Se

Although the preamble of the claim recites that it is directed to a "system" (i.e., apparatus). The subject matter (e.g., nodes) recited in the body of the claim is interpreted as software per se.

As noted supra, apparatus claims should be defined in terms of their structural components.

NOTE: Applicant should review specification for support and indicate where support may be found (i.e., Whether the nodes are hardware and/or software). If the nodes are hardware, applicant should claim in terms of components of system rather than the steps or acts performed (e.g., "submitting node configured to transmit ...", "sponsor node configured to disclose ..." etc. ) Alternatively, in the body of the system claim, applicant should identify the required structural components (e.g., memory, processor, buyer/seller device etc.) and what they do (e.g. "configured to"). NOTE: Please review dependent claims 2 – 6 and make similar changes.

Dependent claims are further rejected based on the same rationale as the claims from which they depend.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-6** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, essential steps and/or essential structural cooperative relationships of elements such omission amounting to a gap between the elements, the steps and/or the necessary structural connections. See MPEP § 2172.01. The omitted elements, steps and/or structural cooperative relationships are:

Re Claim 1: Should "a submitting node for transmitting information describing a product and information including sale conditions to a sponsor node for any product and submitting the product in the auction;" be

-- a submitting node configured to

transmit information describing a product and information including sale conditions for the product to a sponsor node,

and submit the product in the auction; -- or something similar?

It would seem all the information would pertain to the specific product and not any product.

Re Claim 1: Should "a sponsor node for disclosing said submitted product as a product for auction by a format enabling viewing from individual nodes,

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receiving a bid from any node, determining a successful bid from bids having purchase conditions matching with the sale conditions of the product, changing part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction, and including this as a product for auction again; and”  
be

-- a sponsor node configured to

disclose said submitted product as a product for auction by presenting a disclosure of the information describing the product and the information including the sales conditions for the product in a format enabling viewing from one or more bidding nodes,

receive a bid including purchase conditions from said one or more bidding nodes, determine whether there is a successful bid [among the bids received ???] that has purchase conditions matching with the sale conditions of the product, [establishing a transaction when there is a successful bid ??? This step appears to be missing from the claim],

change part or all of the disclosure for the product when it fails in establishment of a transaction,

and [re-submitting the product as a product for auction by presenting the changed disclosure in a format enabling viewing from said one or more bidding nodes ???]; and -- or something similar ?

Only the information is actually sent to the sponsor node and not anything about the submission of the product for auction.



Since the purchase conditions are what are compared to the sales conditions.  
The claim should clarify how the purchase conditions are received (e.g., as part of the bid ?)

Subsequent language in the claim refers to a "disclosure".

It would seem that a term like "said" or "the" is needed to suggest that the sponsor node is the same one that the information was transmitted to.

It would seem that the individual node(s) are really "bidding node(s)". If so, consistent terminology should be used.

Re Claim 1: Should, "a bidding node for viewing the product for auction disclosed from said sponsor node via a network and placing a bid with respect to the product desired to be purchased." be  
-- a bidding node configured to

view the product for auction disclosed by said sponsor node via a network,  
and place a bid with respect to the product desired to be purchased. -- or  
something similar?

Since the purchase conditions are what are compared to the sales conditions.  
The claim should clarify how the purchase conditions are received (e.g., as part of the bid ?)

It seems that bidding node(s) are what interact with the sponsor node and that should be clarified in the claim.

NOTE: Please review dependent claims 2 – 6 and make similar changes.

Re Claims 2 and 3: Should "information" be -- instruction -- ? The sponsor node acts based on an instruction. If so, consistent terminology should be used.

Re Claims 2 and 3: Should "if" be -- when -- ? Please note claim interpretation supra. Applicant should claim the condition explicitly since "if" suggests it may never occur.

Dependent claims are rejected based on the same rationale as the claims from which they depend.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-4 and 6** are rejected under 35 U.S.C. 102(e) as being anticipated by Wagoner, US Pat. No. 7,219,080.

**Re Claim 1:** Wagoner discloses an auction system for carrying out an auction in a network to which a plurality of nodes are connected, comprising:

a submitting node for transmitting information describing a product and information including sale conditions to a sponsor node for any product and submitting the product

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in the auction (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16);

a sponsor node for disclosing said submitted product as a product for auction by a format enabling viewing from individual nodes (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16),

receiving a bid from any node (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15);

determining a successful bid from bids having purchase conditions matching with the sale conditions of the product (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15),

changing part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60),

and including this as a product for auction again (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60); and

a bidding node for viewing the product for auction disclosed from said sponsor node via a network (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15),

and placing a bid with respect to the product desired to be purchased (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15).

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**Re Claim 2:** Wagoner discloses the claimed invention supra and further discloses wherein said submitting node transmits to the sponsor node information on whether it wishes to submit the product for re-auction if ,the transaction fails to be established (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16), and said sponsor node includes a product as a product for re-auction only when a product for which a transaction has failed to be established has an instruction for submission for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Re Claim 3:** Wagoner discloses the claimed invention supra and further discloses wherein said submitting node transmits to the sponsor node information on whether it wishes to submit the product for re-auction if the transaction fails to be established along with information describing the product and information on the sales conditions at the same time as applying for submission of the product (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16), and said sponsor node changes part or all of the content of the disclosure relating to the product and the sales conditions (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60), and includes a product as for re-auction only for a product for which a transaction has failed to be established and having an instruction for submission for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

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**Re Claim 4:** An auction system as set forth in claim 3,

wherein said sales conditions include a minimum reserve (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 6, lines 30 - 47; col. 11, line 60+ - col. 12, line 56),

said purchase conditions include a bid (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15), and

said sponsor node determines the successful bid from the bids of at least said minimum reserve (Wagoner, col. 2, lines 53+ - col. 3, line 4; col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 6, lines 30 - 47; col. 7, lines 6 - 15; col. 6, line 60+ - col. 12, line 56),

makes changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 30 - 60; col. 11, line 60+ - col. 12, line 56),

and including that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Re Claim 6:** Wagoner discloses the claimed invention supra and further discloses

wherein said sale conditions include information designating an auction period (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16; col. 13, lines 19 - 42), and

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said sponsor node discloses said product and receives bids in said designated period (Wagoner, col. 2, lines 30+ - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15; col. 13, lines 19 - 42),

makes changes including changing the auction period for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 – 60; col. 13, lines 19 - 22),

and includes that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Claims 1-3 and 5** are rejected under 35 U.S.C. 102(e) as being anticipated by Porat, US Pat. No. 7,330,826.

**Re Claim 1:** Porat discloses an auction system for carrying out an auction in a network to which a plurality of nodes are connected, comprising:

a submitting node for transmitting information describing a product and information including sale conditions to a sponsor node for any product and submitting the product in the auction (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 – 36; col. 35, lines 28 – 48; col. 36, lines 53+ - col. 37, line 6);

a sponsor node for disclosing said submitted product as a product for auction by a format enabling viewing from individual nodes (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 – 36; col. 35, lines 28 – 48; col. 36, lines 53+ - col. 37, line 6),

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receiving a bid from any node (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6);

determining a successful bid from bids having purchase conditions matching with the sale conditions of the product (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6),

changing part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47),

and including this as a product for auction again (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47); and

a bidding node for viewing the product for auction disclosed from said sponsor node via a network (Porat, col. 37, lines 7 – 34),

and placing a bid with respect to the product desired to be purchased (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6).

**Re Claim 2:** Porat discloses the claimed invention supra and further discloses

wherein said submitting node transmits to the sponsor node information on whether it wishes to submit the product for re-auction if ,the transaction fails to be established

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(Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 – 36; col. 35, lines 28 – 48; col. 36, lines 53+ - col. 37, line 6), and

said sponsor node includes a product as a product for re-auction only when a product for which a transaction has failed to be established has an instruction for submission for re-auction (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47)..

**Re Claim 3:** Porat discloses the claimed invention supra and further discloses

wherein said submitting node transmits to the sponsor node information on whether it wishes to submit the product for re-auction if the transaction fails to be established along with information describing the product and information on the sales conditions at the same time as applying for submission of the product (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 – 36; col. 35, lines 28 – 48; col. 36, lines 53+ - col. 37, line 6), and said sponsor node changes part or all of the content of the disclosure relating to the product and the sales conditions (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47),

and includes a product as for re-auction only for a product for which a transaction has failed to be established and having an instruction for submission for re-auction (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47).

**Re Claim 5:** Porat discloses the claimed invention supra and further discloses



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wherein said sponsor node discloses each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction (Porat, col. 37, lines 7 – 34).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagoner as applied to claims 1, 2 and 3 above, and further in view of Porat, US Pat. No. 7,330,826.

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**Re Claim 5:** Wagoner discloses the claimed invention supra but fails to explicitly disclose

wherein said sponsor node discloses each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction.

Porat discloses:

wherein said sponsor node discloses each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction (Porat, col. 37, lines 7 – 34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Wagoner by adopting the teachings of Porat to provide wherein said sponsor node discloses each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or

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product) ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Claims 4 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Porat as applied to claims 1, 2 and 3 above, and further in view of Wagoner, US Pat. No. 7,219,080.

**Re Claim 4:** Porat discloses the claimed invention *supra* but fails to explicitly disclose: wherein said sales conditions include a minimum reserve,

said purchase conditions include a bid, and

said sponsor node determines the successful bid from the bids of at least said minimum reserve, makes changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and including that product as a product for re-auction.

Wagoner discloses:

wherein said sales conditions include a minimum reserve (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 6, lines 30 - 47; col. 11, line 60+ - col. 12, line 56),

said purchase conditions include a bid (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15), and

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said sponsor node determines the successful bid from the bids of at least said minimum reserve (Wagoner, col. 2, lines 53+ - col. 3, line 4; col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 6, lines 30 – 47; col. 7, lines 6 – 15; col. 6, line 60+ - col. 12, line 56),

makes changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 30 – 60; col. 11, line 60+ - col. 12, line 56),

and including that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Porat by adopting the teachings of Wagoner to provide wherein said sales conditions include a minimum reserve, said purchase conditions include a bid, and said sponsor node determines the successful bid from the bids of at least said minimum reserve, makes changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and including that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or product) ready for improvement to yield predictable results; and known work in one field

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of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claim 6:** Porat discloses the claimed invention *supra* but fails to explicitly disclose:

wherein said sale conditions include information designating an auction period, and said sponsor node discloses said product and receives bids in said designated period, makes changes including changing the auction period for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction.

Wagoner discloses:

wherein said sale conditions include information designating an auction period (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16; col. 13, lines 19 - 42), and

said sponsor node discloses said product and receives bids in said designated period (Wagoner, col. 2, lines 30+ - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15; col. 13, lines 19 - 42),

makes changes including changing the auction period for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 – 60; col. 13, lines 19 - 22),

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and includes that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Porat by adopting the teachings of Wagoner to provide wherein said sale conditions include information designating an auction period, and said sponsor node discloses said product and receives bids in said designated period, makes changes including changing the auction period for a product for which a transaction has failed to be established and being submitted for re-auction, and includes that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or product) ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on M-F, 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571)272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC  
/JAGDISH N PATEL/  
Primary Examiner, Art Unit 3693